

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LOVELL THOMAS,

Petitioner,

Case No. 2:12-cv-11707
Hon. Lawrence P. Zatkoff

v.

MARY BERGHUIS,

Respondent.

ORDER DENYING PETITIONER'S MOTION TO EXPAND THE RECORD

On April 17, 2012, Petitioner Lovell Thomas, a state inmate, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, alleging that he is incarcerated in violation of his constitutional rights. Pending before the Court is Petitioner's motion to expand the record [dkt. 19].¹ For the reasons set forth below, the Court will deny the motion.

Petitioner's motion asks for the Court to issue an order compelling production of transcripts of 9-1-1 calls referred to at trial to support his claim that the prosecutor suppressed this favorable evidence. He alleges that he attempted to expand the record in state court, but his efforts were thwarted.

In *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011), the Supreme Court held that where habeas claims had been decided on their merits in state court, a federal court's review under 28 U.S.C. § 2254(d)(1)—under which the standard of review is whether the state court determination was

1. Petitioner's motion to expand the record also contains two requests—an order compelling presentation of evidence and appointment of counsel to help attain this evidence—that are contingent upon the Court's granting Petitioner's motion to expand the record. As the Court is denying Petitioner's motion to expand the record, Petitioner's remaining requests are DENIED AS MOOT.

contrary to or an unreasonable application of established federal law—must be confined to the record that was before the state court. 131 S. Ct. at 1398. The *Pinholster* Court found that the federal district court should not have held an evidentiary hearing regarding the petitioner’s claims until after the Court determined that the petition survived review under Section 2254(d)(1). *Id.*, at 1398 (“review under 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits. . . . It follows that the record under review is limited to the record in existence at that same time, *i.e.*, the record before the state court.”).

It is undisputed that Petitioner’s habeas claims were decided on the merits in state court. Therefore, based on the Supreme Court decision in *Pinholster*, the Court’s review is limited to the record before the state court.

Accordingly, IT IS HEREBY ORDERED that Petitioner’s motion to expand the record [dkt. 19] is DENIED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
Honorable Lawrence P. Zatkoff
United States District Judge

Dated: December 9, 2014